

EXHIBIT 3

BEFORE THE NATIONAL LABOR RELATIONS BOARD
Case No. 13-RC-21909

In the Matter of:

RUAN TRANSPORTATION CORP.

Employer,

And

Teamsters Local 705, IBT

Petitioner,

And

Teamsters Local 710, IBT

Intervener,

8-50-10

EXCEPTIONS OF TEAMSTERS, LOCAL 710 TO THE HEARING OFFICER'S
REPORT ON CHALLENGES AND BRIEF IN SUPPORT OF EXCEPTIONS

Intervener, Teamsters Local 710 files Exceptions to the Hearing Officer's Report on Challenges issued on August 6, 2010, with regard to Challenge number 2.

Exception 1: The Hearing Officer's characterization of the marks on the challenged ballot is inaccurate. The Hearing Officer stated: "the voter shaded over the "X" that he placed in the 710 box with a purple highlighter. This colored marker covers the entire box, rendering the "X" barely visible to the naked eye."

(Page 6)

The Hearing Officer added, at pg. 9, "Even though the voter placed markings in both boxes, his use of a purple highlighter to color over the "X" in the Local 710 box nearly obliterated this mark. When first examining the ballot, the "X" in this box was not visible to the naked eye In addition, it appears that the

voter emphasized his selection for Local 705 by ensuring that the mark in this box is a dark black "X." Therefore, although these markings indicate that the voter changed his mind, his intent to cast a ballot for Local 705 is clear."

Exception 2: The Hearing Officer's finding that the intent of the voter of the challenged ballot is clear and that he intended to vote for Local 705 is incorrect.

The Hearing Officers stated: "[T]he fact that purple highlighting appears to be the voter's attempt to obliterate his selection for the Intervener (even if it does not match the color of the ballot), thus resolving ambiguity regarding the voter's intent. . . . Therefore, . . . I find that the ballot clearly and unambiguously expresses the voter's intent to cast a vote in favor of the Petitioner."

Argument

At the election, the Board Agent did not count a ballot that was marked in both union boxes. Upon a challenge by the Employer of the mismarked ballot, the Board Agent did not include the ballot in the tally of ballots. The pink ballot, which was admitted as Board Exhibit 2 at the hearing, shows an "X" in black ink in both the 705 and the 710 box. Moreover, it appears that the voter highlighted the "X" that he placed in the 710 box by shading the 710 box in with a purple marker. In contrast, the 705 box merely contains the "X" in black ink.

The Hearing Officer incorrectly concludes that the voter's use of a purple highlighter to color over the "X" in the Local 710 box nearly obliterated this mark, and that the "X" in the 710 box was not visible to the naked eye. To the

contrary, the "X" is readily visible. Moreover, the use of a purple highlighter emphasizes the marking in the 710 box; there is no attempt by the voter to obliterate this marking, as found by the Hearing Officer. If the voter attempted to obliterate the marking, he would have done something else, such as using the same black pen he used to mark the ballot and either scratched over the "X" in the 710 box as the voter did in *Abtex Beverage Corp.*, 237 NLRB 1271 (1978) or using a pencil to scratch over the unintended mark. See *Brooks Bros.*, 316 NLRB 176 (1995). In addition, the ballot contains no erasure marks or other markings to show any attempt to obliterate any of the markings on the ballot. The highlighter in this instance was used by the voter to emphasize his marking in the 710 box, not to obliterate it.

The Hearing Officer incorrectly concludes that the voter's intent is clear from the markings on the ballot and that he intended to vote for Local 705. In order for a ballot to be valid, the Board requires that the intent of the voter in marking his ballot must be clearly manifested. *Daylight Grocery Company, Inc.*, 678 F.2d 905 (11th Cir. 1982). A voter's intent may be discerned even where a voter makes markings in two boxes. *Wackenhut Corporation v. NLRB*, 666 F.2d 464, 467-468 (11th Cir. 1982).

Where there is an attempt to erase or obliterate one of the markings, the Board has found that the obvious inference is that the voter began to make a mark in one box and either changed his mind or realized that he was not

marking the box of his choice. *Id.* at 468. In addition, where a ballot with multiple markings has additional markings that indicate a particular choice, those markings were understood to merely emphasize that choice. *Id.*

In this case, there is no attempt at erasure or obliteration of a marking on the ballot. It is clear that the voter initially marked the 705 box, but after having realized his mistake, decided to highlight the 710 box. Although both boxes contain an "X," the voter then sought to correct his mistake by highlighting his preferred choice on the ballot. He highlighted his choice by placing a purple highlight over the "X" in the 710 box. This highlighted marking clearly indicates a particular choice by the voter and his attempt to emphasize that choice. It is unreasonable to conclude that the use of the highlighter was an attempt to erase or obliterate the voter's choice for Local 710, as highlighters are normally used to emphasize a marking.

This conclusion is consistent with the Board majority's reasoning in *Bishop Mugavero Center for Geriatric Care*, 322 NLRB 209 (1996), because the marking and the additional highlighting in the 710 box constitute the "other markings" on a double-marked ballot required by the majority in *Bishop Mugavero Center* to evidence a voter's clear intention in casting a ballot.

This interpretation is in line with that of the Board's in *Osrarn Sylvania, Inc.*, 325 NLRB 758, 759 (1998). There, the Board held that the ballot expressed a clear expression of the voter's intent. The ballot was marked with a smudged diagonal

line in the "Yes" box and an "X" in the "No" box, but also had additional marking in the "No" area of the ballot. The Board observed that even assuming that there was no smudge mark in the "Yes" box, the "X" in the "No" box, together with the additional markings in the "No" area of the ballot clearly express the voter's intent to vote "No" in the election. In this instance the ballot contains no smudge or erasure marks to show any attempt to obliterate any of the markings on the ballot. To the contrary, the voter used a highlighter in the 710 box to emphasize his choice.

Therefore, the intent of the voter is clear, however contrary to the Hearing Officer, the ballot must be declared a vote for Local 710. Local 710 Requests that the ballot be counted in its favor and that a certification of representative be issued.

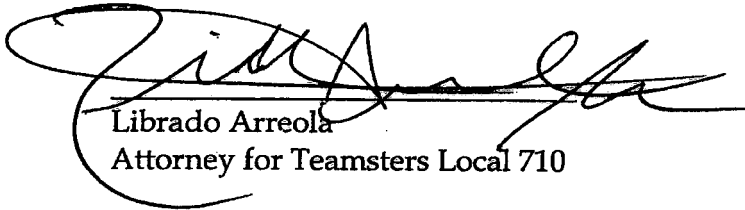
However, if the Board decides to consider the mismarked ballot as a void ballot, Local 710 requests that another run-off election be held. In accordance with Section 102.70 of the Board's Rules and Regulations, "In the event two or more choices receive the same number of ballots and another choice receives no ballots *and there are no challenged ballots that would affect the results of the election, and if all eligible voters have cast valid ballots*, [emphasis added] there shall be no runoff election and a certification of results of election shall be issued."

In this case, the initial election resulted in a tie between the two unions and no votes being cast in favor of having no union representation. In addition, not

all eligible voters voted in the first election. Moreover, the run-off election ended in another tie between the two unions, with zero votes being cast in favor of no representation. In addition, not all eligible voters voted in the run-off election. There were 32 eligible voters on the voting list; only 30 voters voted, which resulted in 14 votes cast for each union and 2 challenged ballots. Therefore, since not all the eligible voters have cast a valid ballot, another rerun election must be held.

Dated at Chicago, Illinois, this 19th day of August 2010.

Respectfully Submitted



Librado Arreola
Attorney for Teamsters Local 710

Asher, Gittler & D'Alba, Ltd.
200 W. Jackson Blvd., Suite 1900
Chicago, IL 60606
T 312-263-1500
F 312-263-1520

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2010, the original and seven copies of the "Exceptions Of Teamsters, Local 710 To The Hearing Officer's Report On Challenges And Brief In Support Of Exceptions" was filed by next day delivery with the Executive Secretary of the Board, at:

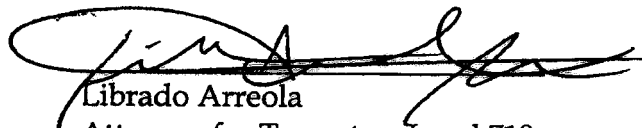
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

and I certify that on August 19, 2010, a true and correct copy of the "Exceptions Of Teamsters, Local 710 To The Hearing Officer's Report On Challenges And Brief In Support Of Exceptions" was served by next day delivery upon the following parties:

Joseph Barker
Regional Director
NLRB
Region 13
209 S. LaSalle Street, 9th Floor
Chicago, IL 60604

Edward Burke
Teamsters Local 705
1645 W. Jackson Blvd., 7th Floor
Chicago, IL 60609-2633

Frederick L. Schwartz
Littler Mendelson, PC
200 N. LaSalle Street, Suite 2900
Chicago, IL 60601


Librado Arreola
Attorney for Teamsters Local 710

Asher, Gittler & D'Alba, Ltd.
200 W. Jackson Blvd., Suite 1900
Chicago, IL 60606
T 312-263-1500
F 312-263-1520